UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 5

In the Matter of:	)	
	)	
TRANSDEV SERVICES, INC.	)	
	)	
Employer,	)	
	)	
and	)	
	)	
AMIR DAOUD,	)	**Case No: 05-RD-268864**
	)	
Petitioner,	)	
	)	
and	)	
	)	
OFFICE AND PROFESSIONAL EMPLOYEES INTERNATIONAL UNION, LOCAL 2, AFL-CIO	)	
	)	
Union.	)	

EMPLOYER TRANSDEV SERVICES, INC.'S OPPOSITION TO REQUEST FOR REVIEW AND MOTION TO SUBSTITUTE PETITIONER

McMAHON BERGER, P.C.

James N. Foster, Jr.
Michelle M. Cain
2730 North Ballas Road, Suite 200
St. Louis, Missouri 63131
(314) 567-7350
(314) 567-5968 (facsimile)

Attorneys for Employer
Transdev Services, Inc.

OF COUNSEL:

McMahon Berger, P.C.
2730 North Ballas Road, Suite 200
St. Louis, Missouri 63131

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EMPLOYER TRANSDEV SERVICES, INC.'S OPPOSITION TO REQUEST FOR REVIEW AND MOTION TO SUBSTITUTE PETITIONER

Comes now Employer, Transdev Services, Inc. ("Employer" or "Transdev"), by its attorneys, and pursuant to Section 102.67(7) of the National Labor Relations Board's ("Board") Rules and Regulations, submits its Opposition to Request for Review and Motion to Substitute Petitioner dated January 11, 2021.

I. INTRODUCTION

In his January 11, 2021 Petition for Review, Petitioner Amir Daoud ("Petitioner") requests that the Board review the Regional Director of Region 5's Decision and Order dated December 22, 2020 ("Decision") which dismissed Petitioner's petition to decertify the Office and Professional Employees International Union, Local 2 ("Union") as the collective bargaining

representative of approximately 52 of Transdev's employees at its facilities in Huntington, West Ox, and Fairfax, Virginia.

Petitioner does not dispute that Transdev and that Union entered into a valid collective bargaining agreement, that the agreement was in writing and signed by both Transdev and the Union, that the agreement was fully executed before the decertification petition was filed, that the agreement applied to the same employees covered by the decertification petition, that the agreement contained substantial terms and conditions of employment, including wage increases retroactive to November 2019, and that the terms of the agreement were implemented by Transdev, including wage increases, on the effective date of the agreement. There is no dispute, then, that the requirements for an effective contract bar under the Board's long-standing contract bar doctrine have been met in this case and that the Regional Director's Decision is consistent with Board policy and precedent.

Instead of disputing the Regional Director's decision regarding the facts or law of this case, the Petitioner's sole argument is that the Board should "reject its current contract bar policy." (Petitioner's Request for Review and Motion to Substitute Petitioner ("Request for Review"), p. 2). The Request for Review should be denied for multiple reasons. First, Petitioner, by his own admission, is no longer a member of the bargaining unit and is, therefore, no longer an "interested party" who may seek review of the Regional Director's Decision. He has attempted to substitute a bargaining unit member as a petitioner, but that motion should have been directed to the Regional Director, not the Board, under the Board's Rules and Regulations. Second, this case is inappropriate for Board review of the contract bar doctrine because none of the justifications for reversal of that doctrine are present in this case and even if the Board revises or rejects the doctrine in *Mountaire Farms, Inc.,* Case No. 05-RD-256888, that decision should not be applied

retroactively to this case. Third, if it reaches the issue, the Board should not eliminate the contract bar doctrine because it balances the Act's primary policy goal of labor stability with the goal of allowing employees the free choice of a representative. Rejecting the contract bar doctrine, after over eighty years of its application would upend the labor stability achieved by the doctrine and, in this case, harm the parties who justifiably relied upon it during collective bargaining negotiations. Finally, Petitioner's request for a stay of this matter pending resolution of *Mountaire Farms* should be denied because Petition has failed to establish any grounds under the Board's rules justifying such extraordinary relief.

II. STATEMENT OF FACTS

A. Transdev and the Union's Contract Negotiations

On July 27, 2016, Region 5 of the National Labor Relations Board certified the Union as the exclusive collective bargaining representative of the employees in the following unit:

> All full-time and part-time road supervisors, station supervisors, dispatchers, classroom trainers and EOCC controllers employed by the Employer at its Fairfax Connector Division with work sites currently in Huntington, West Ox, and Fairfax, Virginia, excluding all chief supervisors, assistant chief supervisors, and all other employees represented by a labor organization, clerical office, professional employees, guards, and supervisors as defined in the Act.

(Decision, p. 2.). The Employer subject to the certification was Transdev's predecessor at the Fairfax Connector, MV Transportation. (Decision, p. 3).

When Transdev took over operations of the Fairfax Connector on or about July 1, 2019, it voluntarily recognized the Union as the collective bargaining representative of the employees described in the Certificate of Representation. (Decision, p. 3). It also assumed the existing collective bargaining agreement between the Union and MV Transportation, with minor changes. The MV Transportation/Union contract expired in November 2019. (Decision, p. 3).

Beginning in July 2019, Transdev began negotiations with the Union regarding a successor collective bargaining agreement ("CBA"). (Decision, p. 3). Union Vice President Michael Spiller had the authority to negotiate a contract and to enter into side letters, agreements and collective bargaining agreements on behalf of the Union. (Decision, p. 3).

The parties reached some tentative agreements on some issues, but disagreed on other issues. (Decision, p. 3). The Union presented a tentative agreement to its members in June 2020, but it did not contain agreements on the economic terms. (Decision, p. 3). The bargaining unit voted down the tentative agreement in June. (Decision, p. 3).

In October 2020 during bargaining, Transdev and the Union engaged in a mediation session with Arbitrator Spilker to resolve the parties' dispute about a retroactive wage increase in the successor CBA. (Decision, p. 3). After the mediation, Transdev and the Union reached an agreement on the wage dispute, agreeing to a two percent pay raise for certain bargaining unit members retroactive to November 2019. (Decision, p. 3).

The Union held a videoconference with its members on or about October 21, 2020, during which it informed the members that the Union would accept Transdev's last offer regarding wage increases and would sign the successor collective bargaining agreement. (Decision, p. 3). The Union informed the bargaining unit members that it would accept the "economics of the contract" based on the recommendation of its attorney and a conversation with the mediator. (Decision, p. 3). Spiller also explained to unit members that the contract needed to be concluded by November 1, 2020 so that employees could receive retroactive pay raises, that the Union's constitution did not require that the members ratify the contract before it was signed, and that acceptance of the collective bargaining unit would not be put to a member ratification vote. (Decision, p. 3).

Representatives of the Union and Transdev signed the successor collective bargaining agreement on October 30 and October 31, 2020 respectively. (Decision, p. 3). The CBA does not contain an express condition requiring ratification of Union members, and the Union signed the CBA without a ratification vote. (Decision, p. 3). The CBA was effective from October 30, 2020 through November 10, 2023. (Decision, p. 3).

The CBA is a written agreement which contains the signatures of representatives of the Union and Transdev. (Decision, p. 3). It contains provisions regarding the substantial terms and conditions of employment of bargaining unit employees, including clauses regarding union recognition, seniority, layoff, recall, union business and activity, discipline, grievance and arbitration, scheduling and hours of work, health and welfare, paid leave, holiday, vacation, wages, uniforms, management rights, hours of work, pay, nondiscrimination, and no-strike/lockout, among other provisions. (Decision, p. 3). The pay raises, adjustments and employee entitlements contained in the CBA were put into effect by Transdev on the effective date of the CBA. (Decision, p. 3).

B. <u>The Decertification Petition</u>

Petitioner filed the decertification petition on November 10, 2013, ten days after the CBA was signed and Transdev put into effect the terms contained in the CBA, including retroactive pay raises. (Decision, p. 3). In the decertification petition, Petitioner contended that the CBA was invalid because the Union "misled" the bargaining unit and because none of the unit members were informed that the CBA had been signed prior to the filing of the Petition for Decertification. (Decision, p. 4).

The Regional Director determined that the CBA barred the decertification petition pursuant to the "well-settled contract bar doctrine." (Decision, p. 4). The Regional Director concluded that

the CBA operated as contract bar because it was in writing and was "the result of free collective bargaining between the Employer and the Union." (Decision, p. 5). He also determined that the CBA was signed, executed and became effective before the Petition for Decertification was filed. (Decision, p. 6). The Regional Director also concluded that the CBA contained substantial terms and conditions of employment, covered the employees in the decertification petition and that the bargaining unit was "appropriate for purposes of collective bargaining." (Decision, p. 6). He also determined that the CBA was not a master agreement requiring additional local agreements for Transdev's three facilities. (Decision, p. 6). The Regional Director concluded that the CBA was "a valid collective bargaining agreement that conforms to certain bar-quality requirements set forth by the Board and was executed prior to the November 10 petition." (Decision, p. 6) On that basis he dismissed the decertification petition. (Decision, p. 6).

III. ARGUMENT

A. The Request for Review Should Be Denied Because Petitioner Is No Longer a Member of the Bargaining Unit, Not an Interested Party, and He Has Improperly Attempted to Substitute a Bargaining Unit Member as the Petitioner.

Petitioner's Request for Review primarily seeks to have the Board invalidate the long-standing contract bar doctrine. (Request for Review, pp. 3-11). It also purports to include a "Motion to Substitute Petitioner." (Request for Review, p. 1). That motion, which is attempted to be asserted in footnote 1 of the Request for Review, states that Petitioner "took a non-unit position with the Employer as an Operator" and that he is "no longer an appropriate petitioner." (Request for Review, p. 1 n. 1). It also asserts that "Currie" (no first name given) is "employed within the bargaining unit and wishes to be substituted as the Petitioner." (Request for Review, p. 1 n. 1). Based on these unsupported assertions of fact, Petitioner and Currie "move to remove [Petitioner]

Daoud and add Currie as the actual and appropriate Petitioner in this proceeding." (Request for Review, p. 1 n. 1).

Petitioner's "motion," asserted in a footnote, contains no citation to the Board's Rules and Regulations. That is likely because the "motion" is improper under Section 102.65(a) of those rules. Section 102.65(a) provides, "All motions, including motions for intervention pursuant to paragraphs (b) and (e) of this section, shall be in writing or, if made at the hearing, may be stated orally on the record and shall briefly state the order or relief sought and the grounds for such motion." It also states, "Motions made prior to the transfer of the record to the Board **shall be filed with the Regional Director**, except that motions made during the hearing shall be filed with the Hearing Officer. After the transfer of the record to the Board, all motions shall be filed with the Board." NLRB Rules and Regulations, § 102.65(a)(emphasis added).

In this case, the record of the proceeding has **not** been transferred to the Board; the Petitioner has merely filed a Request for Review. The record is not transferred to the Board until the issuance of an order granting a request for review to the Board. NLRB Rules and Regulations, § 102.68 ("Immediately upon issuance of an order granting a request for review by the Board, the Regional Director shall transmit the record to the Board"). No order granting the Request for Review has been issued in this case. Therefore, any "motion" to substitute Currie for Petitioner should have been made to the Regional Director, not the Board, pursuant to Section 102.65(a). Because Petitioner has not made such a motion, the Board, according to its own rules, may not entertain the motion for substitution.

By his own admission, Petitioner is no longer a member of the bargaining unit covered by the decertification petition. (Request for Review, p. 1 n. 1) Consequently, as he admits, he is "no longer the appropriate petitioner in this case." (Request for Review, p. 1 n. 1). Because the

Petitioner has not properly moved for a substitute petitioner before the Regional Director, there is no member of the bargaining unit properly petitioning the Board for review of the Regional Director's Decision. Pursuant to Section 102.67(c) of the Board's Rules and Regulations, only an "interested party" may petition for review of a Regional Director's actions in a case involving the determination of a question concerning representation. Because Petitioner admits he is not a member of the bargaining unit and is an inappropriate petitioner and because no substitute petitioner has been properly added to this case, the Request for Review has not been brought by an "interested party." It therefore fails as a matter of law and should be denied.

B. <u>This Case Is Inappropriate for Review of the Contract Bar Doctrine</u>.

Even if the Board does not deny the Request for Review on the grounds that no interested party has sought review, it should nevertheless deny the Request for Review because this case is not the appropriate one for review of the contract bar doctrine. The Board in *Mountaire Farms, Inc.,* Case No. 05-RD-256888, requested briefing on the issue of whether the contract bar doctrine should be reversed or revised, and multiple amici briefs have been filed on the issue in that case. While that case may be appropriate for review of the contract bar doctrine, this case is not because none of arguments which Petitioner claims justify the elimination of the contract bar doctrine are present in this case.

Petitioner argues in his Request for Review that the contract bar should be rejected on the grounds that it adversely affects employees' rights under Sections 7 and 9 of the Act. (Request for Review, p. 5). In support of his argument, he contends that it is difficult for employees to calculate the collective bargaining agreement expiration date or the hiatus period in order to file a petition for decertification, citing *Smith's Food & Drug Centers, Inc.,* No. 27-RD-141924 (Feb. 13, 2015), and *Forsythe Transportation, Inc.,* No. 05-RD-068230 (Dec. 1, 2011), in which Regional Directors

dismissed decertification petitions where employees were unable to determine the appropriate time period in which to file the petitions. (Request for Review, p. 7).

In this case, however, there is no dispute that the employees knew the appropriate period when they could file a decertification petition. The previous collective bargaining agreement expired in November 2019, a **year** before Petitioner filed the decertification petition. Transdev and the Union began negotiations for a successor agreement in July 2019 and continued to negotiate through October 2020. Employees were well aware of the expiration of the previous collective bargaining agreement and the ongoing negotiations; Petitioner admitted that the Union held meetings about the negotiations in both July and October 2020. (Request for Review, p. 2). Employees were not "kept in the dark" about either the expiration of the previous contract or the status of negotiations for the successor agreement, as they were in the two cases cited by Petitioner.

Petitioner also claims that the contract bar doctrine should be eliminated because "after a hiatus begins employees must race to file for decertification before the hiatus ends." (Request for Review, p. 8). The hiatus period the Petitioner claims is confusing for employees is not, however, even applicable in this case, by Petitioner's own admission. (Request for Review, p. 6 n. 2). The "race" never occurred in this case, because, **for a year**, bargaining unit members knew when the contract expired, knew that Transdev and the Union were negotiating a new contract, and knew the non-economic terms of that contract because the Union kept them informed about them. If bargaining unit members were unhappy with their representation by the Union, they were not required to file their petition for decertification only during the 30-day window prior to the expiration of the contract; they had ample time to file a decertification petition after the contract expired. Nevertheless, Petitioner waited until November 10, 2020 to file the decertification petition, well **after** the November 1, 2020 date Union representative Spiller told bargaining unit

members that the contract needed to be signed in order to receive retroactive pay raises.[1] Thus, there was no necessity for a "race to decertification," as Petitioner alleges, because the time period between the two contracts was more than enough time for any dissatisfied employee such as Petitioner to file a decertification petition. There were no "unknowable, arbitrary and sometimes purposefully rigged rules," as Petitioner asserts, because in this case, Petitioner and other employees were informed of the Union's decision to sign the CBA and had no need to "race" to decertify the Union.

Additionally, this is not a case, like *Mountaire Farms,* where the issue of the application of the contract bar doctrine is questionable. In this case, every element necessary for the application of the doctrine is met. The CBA is a written agreement, signed and executed by both parties, which contains substantial terms and conditions of employment. (Decision, pp. 5-6). *See Empire Screen Printing, Inc.*, 249 NLRB 718 (1980) (contract must be written agreement); *J. Sullivan & Sons Mfg. Corp.*, 105 NLRB 549 (1953)(same); *DePaul Adult Care Communities,* 325 NLRB 681 (1998)(contract must be signed); *Freuhauf Trailer Co.,* 87 NLRB 589 (1949)(same); *Appalachian Shale Products Co.*, 121 NLRB 1160, 1163 (1958)(contract must contain substantial terms and conditions of employment); *Artcraft Displays, Inc.*, 262 NLRB 1233, 1235 (1982) (same). The CBA covers an appropriate unit and encompasses the same bargaining unit covered by the decertification petition, and it is not a master agreement requiring additional local agreements. (Decision, pp. 5-6). *See Appalachian Shale*, 121 NLRB at 1164 (contract may not be master agreement); *Burns Int'l Sec. Serv.,* 257 NLRB 387, 388 (1981) (same); *Houck Transport*

[1] Petitioner's claim that the Union did not inform bargaining unit members that it had signed the CBA is irrelevant because there is no requirement that bargaining unit members be informed of the execution of a contract in order for the contract bar doctrine to apply. Additionally, it is undisputed that Petitioner and other bargaining unit members were notified by the Union during the October 21, 2020 video meeting that the CBA needed to be signed by November 1, 2020 and that the Union would sign the contract without a ratification vote. (Decision, p. 3).

Co., 130 NLRB 270 (1961)(contract must encompass employees involved in decertification petition); *Bargain City, U.S.A., Inc.,* 131 NLRB 803 (1961)(same); *Mathieson Alkali Works,* 51 NLRB 113 (1943)(contract must cover appropriate unit); *Indianapolis Power & Light Co.,* 76 NLRB 136, 138 n. 4 (1948)(same). Additionally, the CBA was signed and its terms implemented, including retroactive pay raises **before** the decertification petitioner was filed. (Decision, p. 6). Petitioner does not dispute these facts, or that the Regional Director's Decision that the contract bar was applicable. The clear-cut nature of the application of the contract bar doctrine makes review in this case inappropriate.

Petitioner's justifications for ending the long-standing contract bar doctrine are simply not present in this case. This case is not the appropriate one for review of the contract bar doctrine, which is already being reviewed by the Board in *Mountaire Farms.* Even if the Board should determine in *Mountaire Farms* that the contract bar doctrine should be rejected or revised, its holding should not apply to this case because it is clearly applicable here, the parties relied on the doctrine during their negotiations for a successor CBA, the matter has already been decided by the Regional Director, and there is no basis for retroactively applying any order entered in *Mountaire Farms* to this case.

C. The Board Should Not Reject the Long-Standing Contract Bar Doctrine.

1. The Contract Bar Balances the Act's Goals of Promoting Labor Stability and Allowing Employees' Free Choice of Collective Bargaining Representatives.

In his Request for Review, Petitioner does not dispute the facts of the case established at the hearing in this matter. Nor does he dispute the Regional Director's conclusion that the CBA was "a valid collective-bargaining agreement that conforms to certain bar-quality requirements set forth by the Board," or that the Employer and the Union met their burden of establishing that the

CBA "operates as a bar to processing this petition further." (Decision, p. 6). Instead, Petitioner asserts that the Board should grant review in order to overturn the contract bar doctrine. (Request for Review, p. 3). Petitioner contends that the contract bar is contrary to the Act's "paramount objectives of employee self-representation and free choice," and that it hinders employees' rights under Sections 7 and 9 of the Act.

Petitioner's arguments are not only inapplicable to the specific facts of this case, as set forth above, but are not supported by long-standing Board law. The policy goals of the Act are not simply to promote the exercise of employee free choice, but to "encourag[e] the practice and procedure of collective bargaining." 29 U.S.C. § 151. Employees' "full freedom of association, self-organization, and designation of representatives of their own choosing," according to the policy of the Act, is "for the purpose of negotiating the terms and conditions of their employment" through collective bargaining, not simply to allow free choice of representatives at any time. 29 U.S.C. § 151. "The basic purpose of the National Labor Relations Act is to preserve industrial peace." *NLRB v. Financial Inst. Employees of America, Local 1182*, 475 U.S. 192, 208 (1986). As noted by the Supreme Court in *Financial Inst.*, multiple provisions of the Act were designed to encourage stable bargaining relationships, *e.g.*, Section 8(b)(7)(A) (prohibiting recognitional picketing by employees represented by recognized union); Section 8(b)(7)(B) (prohibiting recognitional picketing for one year after election); and Section 9(c)(3) (prohibiting second representation election within one year). *See Financial Inst.*, 475 U.S. at 208. The contract bar doctrine is intended to afford employers, unions and employees a reasonable period of time to establish a stable labor relationship without interruption, and at the same time to afford bargaining unit members the opportunity, at reasonable times, to change or eliminate their bargaining representative.

Thus, employee free choice, which Petitioner relies upon almost exclusively in support of his argument, is not the sole consideration in determining the continuing validity of the contract bar doctrine. Instead, that consideration must be balanced by the national interests in labor peace and stability. The contract bar doctrine, which dates back to 1939, furthers both of the basic goals of the Act to eliminate industrial strife and promote labor stability. *See National Sugar Ref. Co.*, 10 NLRB 1410 (1939). The Board in *National Sugar* refused to "proceed with an investigation of representatives" because of the existence of a valid collective bargaining agreement "until such time as the contract is about to expire and a question exists as to the proper representative for collective bargaining with respect to the negotiations of a new agreement." *Id*. at 1415. Since that time, the Board has repeatedly recognized and balanced the two policies – industrial peace and stability and the encouragement of employee free choice of a representative – by finding a reasonable period of time during which employees who have chosen a bargaining agent will be required to adhere to their choice and during which the union will be protected from decertification petitions. In 1958, the Board found that that period was two years. *Pacific Coast Ass'c of Pulp and Paper Mfgrs.*, 121 NLRB 990 (1958); *see also Reed Roller Bit Co.*, 72 NLRB 927 (1947) (2 year contract bar established based on the interest in labor relations stability). In 1962, when the Board extended the contract bar period from two to three years, it noted the "substantially unified stand of both labor and management" in the decision to extend the time period and the support of the "overwhelming majority of labor and management representatives." *General Cable Corp.*, 139 NLRB 1123, 1125 (1962). Additionally, when Congress amended the Act well after the contract bar had been established by the Board, it had the opportunity to either eliminate or amend the doctrine, but it did neither. *See* Labor Management Reporting and Disclosure Act, 29 U.S.C. § 431 (1959).

The Board has stated that one of the principle objectives of the contract bar is "to provide employees with the opportunity to select representatives at reasonable and predictable intervals." *Pacific Coast,* 121 NLRB at 993. Contrary to Petitioner's arguments, the rights of employees to freely choose their bargaining representative is not unlimited, but must be balanced with the "strong national policy of maintaining stability in the bargaining representative." *Financial Inst.*, 475 U.S. at 196. According to the Supreme Court in *Financial Inst.,* pursuant to the national policy favoring labor stability, both the Board and Congress have "restricted the opportunity for employers and employees to challenge a certified union's status as a bargaining representative" through the contract bar. *Id.* The contract bar's three-year period serves the competing goals of providing freedom of choice for employees and encouraging labor stability. *Appalachian Shale Products Co.,* 121 NLRB 1160, 1161 (1958). In *Appalachian Shale,* the Board noted that the contract bar doctrine has been refined in order to achieve "a finer balance between the statutory policies of stability in labor relations and the exercise of free choice in the selection or change of bargaining representatives." *Id.* at 1161. The Board has also determined that while employees' right to select or change a representative is important, postponement of that right is justified under the contract bar doctrine because collective bargaining agreements "eliminate strife which leads to interruption of commerce" and are "conducive to industrial peace and stability." *Paragon Products Corp.*, 134 NLRB 662, 663 (1961).

Petitioner contends that the contract bar should be eliminated because it is not mandated by statutory language and infringes on employees' Section 7 and 8 rights. (Request for Review, pp. 3, 5). The Supreme Court, however, has recognized that the Board has the authority to interpret the Act and has lawfully interpreted and clarified the language of the statute through adjudication. *Am. Hosp. Ass'n v. NLRB,* 499 U.S. 606, 610 (1991). Petitioner's contention that the contract bar

does not serve the purposes of the Act but undermines employees' rights under Sections 7 and 8 of the Act is contradicted by decades of Board law. The Board has made clear in its decisions that it is required by the Act to balance employee freedom to choose representation with the necessity to maintain stable and predictable labor relations and that the contract bar achieves that balance. *General Cable Corp.*, 139 NLRB 1123 (1962); *Paragon Products*, 134 NLRB 662, 663 (1961); *Union Fish Co.*, 156 NLRB 187, 191-92 (1965); *Direct Press Modern Litho, Inc.*, 328 NLRB 860, 860-61 (1999). The contract bar, by providing clear time periods in which to challenge representation, allows employees to do so in a way that does not disrupt bargained-for agreements between employers and unions. Unions are better able to represent their members and negotiate favorable terms and conditions of employment when they are free from the threat and constant challenge of decertification.

Additionally, contrary to Petitioner's argument, employees' free choice of representation is actually protected by the contract bar. Central to the Act's national policy to "encourage the practice and procedure of collective bargaining," the contract bar allows for the free choice of employees concerning their bargaining representative to be respected by the employer and enforced by the Board. After the majority of bargaining unit employees have exercised their free choice of representative through a representative election, that choice should be deferred to for a period of time to allow the process of collective bargaining to succeed. As is clear from the undisputed evidence in this case, collective bargaining is a lengthy and time-consuming process and it requires both commitment and compromise. The contract bar ensures that the employees' choice of a bargaining representative is respected for a sufficient time that gives the parties a reasonable opportunity to implement the agreed-upon terms and conditions of employment after lengthy contract negotiations.

In this case, the agreement reached between the Union and Transdev was the result of a months-long process for the first contract between the parties during which they negotiated substantial terms and conditions of employment without reaching a final agreement on the issue of wages and their retroactive application. The dispute was so significant that the parties, in good faith, agreed to mediation of the issue by Arbitrator Spilker. That mediation ultimately resulted in an agreement. The fact that Petitioner and other bargaining unit employees did not like the result of those negotiations does not make the contract bar as a whole an invalid or ineffective doctrine. In fact, the opposite is true: this case is an example of why the contract bar is a reasonable way to balance employees' free choice with the necessity for labor stability. After the parties extensive and good faith negotiations and agreement, the resulting collective bargaining agreement should not be undermined or eliminated by an election for a new representative. The contract bar doctrine protects the labor stability painstakingly negotiated by Transdev and the Union. Petitioner's generalized arguments about the contract bar doctrine in his Request for Review should not be permitted to prevent or undermine the parties' implementation of that agreement. As the Board noted in *Paragon,* collective bargaining agreements "tend to eliminate strife which leads to interruptions of commerce, [and] are conducive to industrial peace and stability [such that once a] contract has been executed by an employer and a labor organization . . . postponement of the right to select a representative is warranted for a reasonable period of time." 134 NLRB at 663.

2. Eliminating the Contract Bar Would Increase Instability in Labor Relations and Would Impair Employees' Free Choice.

As noted above, the contract bar has been in operation for well over eighty years and has been repeatedly affirmed by the Board and the courts. *See Auciello Iron Works, Inc. v. NLRB,* 517 U.S. 781, 785 (1996); *Paragon Products,* 134 NLRB 662 at 663 (1961). Because the contract bar is so well-established, employers, unions and employees have relied upon it for decades and have

rightfully assumed that an agreement between an employer and a union results in a bar to decertification for a period of three years. The employer and union in this case certainly relied on the long standing doctrine in negotiating, concluding and executing their contract. Eliminating the contract bar now, after decades of use, would unnecessarily inject uncertainty into the bargaining relationship in this case and in those of other employers and unions throughout the country. If the contract bar is held to be inapplicable in this case, Transdev, which has already implemented the terms of the CBA including payment of a retroactive pay raise, would certainly be harmed by detrimentally relying on the decades-long doctrine during its negotiations with the Union.

The rejection of the contract bar doctrine would also upset the balance struck by the Board through years of adjudication between the competing policy goals of labor stability and employee free choice. As the Board noted in *Montgomery Ward & Co.,* 137 NLRB 346, 348 (1962), the contract bar "seeks to afford contracting parties and the employees a reasonable period of stability in their relationship without interruption and at the same time to afford the employees the opportunity, at reasonable times, to change or eliminate their bargaining representatives if they wish to do so." Without the contract bar, that "reasonable period of stability" would be subject to interruption, uncertainty and insecurity.

Elimination of the contract bar would also harm employees because it would increase the possibility that employees will work without the protections of a collective bargaining agreement. Employers and unions are less likely to enter into contracts because of the resulting lack of stability in the bargaining relationship resulting from the fact that the union could be decertified at any time. Even if such agreements are made, neither employers nor unions will have the assurance that the contract will be in force for the period of time negotiated due to the threat of decertification. The Supreme Court has noted, in discussing a successor's obligation to bargain with its employees'

collective bargaining representative, that the presumption of majority support of unions after certification supports the Act's "overriding policy" of "industrial peace" by "promot[ing] stability in collective-bargaining relationships, without impairing the free choice of employees." *Fall River Dyeing & Finishing Corp. v. NLRB*, 482 U.S. 27, 38-39 (1987) (quoting *Terrell Machine Co.*, 173 NLRB 1480 (1969), *enf'd,* 427 F.3d 1088 (4th Cir.), *cert. denied*, 398 U.S. 929 (1970). According to the Court, unions are thus able to "concentrate on obtaining and fairly administering a collective-bargaining agreement without worrying that, unless it produces immediate results, it will lose majority support and will be decertified." *Id.* This permits unions "to develop stable bargaining relationships with employers, which will enable union to pursue the goals of their members, and this pursuit, in turn, will further industrial peace." *Id.*

The contract bar allows employers and unions to develop stable bargaining relationships, and both parties to implement and enforce the terms agreed upon without the threat of decertification. Elimination of the contract bar would also eliminate the stability it engenders. It would harm workers because, if petitions to decertify can be filed at any time, employees would be subject to increased threats of labor turmoil and economic uncertainty. They would also be subject to repeated changes in their wages, health care and working conditions if their representative is replaced through decertification and their employer is required to re-negotiate a collective bargaining agreement. Thus, the Act's goal of providing industrial stability to employees, union, and employers would be thwarted.

Petitioner's argument that the contract bar doctrine should be rejected is unsupported by Board law and case law and would in fact frustrate the Act's primary goal of preserving industrial peace. The objective of the Board's contract-bar doctrine is to achieve a reasonable balance between the policy goals of industrial stability and freedom of choice, and elimination of that

doctrine would upset the balance achieved by the courts and the Boards for over eighty years. Consequently, Petitioner's Petition for Review should be denied.

D. Petitioner's Request for a Stay of this Case Should Be Denied.

Petitioner also contends that the Board should stay consideration of this matter until the Board issues its decision on the continuing validity of the contract bar doctrine in *Mountaire Farms.* (Request for Review, p. 2). Petitioner provides no legal or factual support for its request, and the request should be denied because Petitioner has failed to comply with the Board's rules for extraordinary relief or demonstrate any need for a stay of the Board's consideration of the Request for Review.

Section 102.67(j) of the Board's Rules and Regulations provides that, when requesting review, a party may also move the Board for extraordinary relief, including "a stay of some or all of the proceedings." NLRB Rules and Regulation, § 102.67(j)(1)(ii). Relief is only granted on such motions "upon a clear showing that it is necessary under the particular circumstances of the case." NLRB Rules and Regulations, § 102.67(j)(2). Additionally, "an affirmative ruling by Board granting relief is required before the action of the Regional Director will be altered in any fashion." NLRB Rules and Regulations, § 102.67(j)(2).

Here, Petitioner has made no attempt to demonstrate any showing at all that a stay is necessary under the "particular circumstances" of this case. He has merely requested that if the Board in this case does not reject the contract bar doctrine, it should stay the case pending resolution of *Mountaire Farms*, without providing any evidence that a stay is necessary. In fact, Petitioner has provided no reason whatsoever for extraordinary relief or even acknowledged that he is required to make such a showing under the Board's rules. Absent such a showing, his request fails as a matter of law.

Petitioner does not dispute the underlying facts in this case or the Regional Director's conclusion that the contract bar doctrine is applicable. Because there is no dispute, as set forth above, this case is not appropriate for review of the contract bar doctrine, even if the Board is currently reconsidering that doctrine in *Mountaire Farms.* Any decision in that case should not be applied retroactively to this case, which is clearly covered by the contract bar doctrine. Petitioner has made no showing that extraordinary relief is necessary, and, therefore, his request for a stay should be denied.

IV. CONCLUSION

Wherefore, for these reasons, Employer Transdev Services, Inc. respectfully requests that Petitioner's Request for Review and Motion to Substitute Petitioner be denied. It further requests that if the Board decides to eliminate or revise the contract bar doctrine in *Mountaire Farms,* its decision in that case should not be applied retroactively or to this case. Additionally Transdev requests that Petitioner's request for a stay of this case pending the Board's decision in *Mountaire Farms* be denied.

Respectfully submitted,

McMAHON BERGER

/s/ James N. Foster, Jr.
James N. Foster, Jr.
Michelle M. Cain
2730 North Ballas Road, Suite 200
St. Louis, Missouri 63131
(314)567-7350
(314)567-5968 (fax)
foster@mcmahonberger.com
cain@mcmahonberger.com

Counsel for Employer Transdev Services, Inc.

CERTIFICATE OF SERVICE

I hereby certify that on the 18th day of January, 2021, a true and correct copy of the above document was electronically filed on the Board's website at http://www.nlrb.gov with the Board's Executive Secretary:

Roxanne L. Rothchild
Executive Secretary
National Labor Relations Board
1015 Half Street SE
Washington, D.C. 20570-0001

I further hereby certify that I have this 18th day of January, 2021, served a copy of the foregoing upon the following via electronic mail as follows:

Sean R. Marshall, Regional Director
National Labor Relations Board
Region 5
100 S. Charles St., Suite 600
Baltimore, MD 21201

David R. Levinson
Levinson Law Office
P.O. Box 39286
Washington, DC 20016
levlaw@gmail.com

Amir Daoud
2321 Harleyford Ct.
Reston, VA 20191
amirdaoud@gmail.com

Alyssa K. Hazelwood
Glenn M. Taubman
William L. Messenger
National Right to Work Legal Defense Foundation, Inc.
8001 Braddock Road, Suite 600
Springfield, VA 22160
akh@nrtw.org
gmt@nrtw.org
wlm@nrtw.org

/s/ James N. Foster, Jr.